

## BMP Verification Ad-Hoc Action Team (BMPVAHAT)

### Meeting Minutes

Friday, October 7th, 2022

9:00 AM – 11:00 AM

### [Meeting materials](#)

#### **Summary of Actions and Decisions**

**Decision:** The BMPVAHAT approved the March [meeting minutes](#).

**Action:** Vanessa Van Note, Coordinator, and Jackie Pickford, Staffer, will compile additional feedback from the BMPVAHAT on the Wetland Credit Duration Recommendation. Jackie will distribute a poll for voting members to indicate their position on the consensus continuum regarding the recommendation.

**Action:** Vanessa Van Note will finalize BMPVAHAT final report. Jackie Pickford will distribute a poll to collect feedback from the BMPVAHAT on the summary and recommendations portion of the report, which will eventually be added to the final report. Members will have one month to provide comments before it is presented to the Water Quality Goal Implementation Team.

9:00 **Welcome, Introductions, Roll Call**, *Vanessa Van Note (Coordinator)*

- Participants - Please put your name and affiliation in the chat box.
- **Decision:** The BMPVAHAT approved the March [meeting minutes](#).

9:10 **Recommendation to Extend Wetland Credit Durations**, *Vanessa Van Note, EPA/Coordinator (50 min)*.

Vanessa gave a brief overview of the [BMPVAHAT comments](#) on the [wetland credit duration recommendation](#) and updated the group on the meeting with the Wetlands Workgroup (WWG) leadership regarding these comments. Pam Mason, VIMS/WWG Chair, shared the WWG perspective on the verification of wetland practices.

#### **Discussion**

**Olivia Devereux:** No doubt in my mind that the NRCS wetlands are in perpetuity. Other wetlands, however, may be more questionable because of the way people are defining them when they report practices. In states outside the Chesapeake Bay area, we have seen wetland trading take off because wetlands are covered by these federal laws/regulations that are unique to wetlands.

**Vanessa Van Note (in chat):** <https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/Conservation/PDF/Summary%20May%202022%20CRPMonthly.pdf>

**Vanessa Van Note:** There are restraints/boundaries applied to wetlands that are different from forestry or agricultural practices, which is why sector equitability with wetland verification is not necessarily an issue.

**Pam Mason:** Also - there are still people “verifying” these practices after they’re created and making sure they function, it’s just associated with the permitting process rather than BMP verification.

**Clint Gill:** My only concern would be double counting. When do these fall into a land use change rather than a BMP?

**Vanessa Van Note:** The wetland practices have a land use component and efficiency component, similar to forest buffer practices. Ideally, if they're not reverified, the land use imagery would still be able to capture them. However, I spoke to Peter Claggett who said they can only reliably map wetland loss to impervious cover, but not wetland gain due to creation or loss due to altered hydrology. The Land Use Workgroup is working on that.

**Ted Tesler (in chat):** At least in the non-tidal, Lidar will map/identify these areas very effectively.

**Vanessa Van Note (in chat):** True Ted. Here is what Peter said about our ability at the Bay Program to use Lidar: *"Nothing is affordable yet. The best remote sensing work I've seen is high-side-aperture radar acquired for select sites that indicate the seasonal pulsing of surficial soil wetness in forested environments. Hyper-spectral data would provide another option for both soil wetness and species identification, but such data are very expensive and difficult to manage and interpret 200+ spectral bands (instead of 4) and the software and field data needed to interpret them. Regulatory definitions may limit shifting focus from monitoring wetlands to monitoring hydrologically important landscape features (many of which are wetlands.)"*

**Ted Tesler (in chat):** Thanks Vanessa, understood. They are the bay's kidneys and key landscape denitrifiers.

**Jeff Sweeney:** There are 12 pages in the BMP protocol document saying why we need verification for wetlands. Why would we ignore that? If inspections are done, are they just not being recorded? We have wetlands being reported back to 1980s, so if we got rid of credit durations, we would be assuming all of them are still there, which is not true.

**Pam Mason:** Wetlands that are created for habitat purposes are legally protected. They are not the ones getting lost. I was part of the BMP expert panel, and we did not pay attention to the credit duration aspect.

**Jeff Sweeney:** So how do we know what wetlands are permitted versus not permitted? Some wetland restoration on farms is done voluntarily.

**Pam Mason:** That hardly ever happens. We shouldn't spend this much time on a practice that hardly ever gets reported.

**Katie Brownson (in chat):** Pam- wondering if you have any insights into how the upcoming Supreme Court case may affect protections for wetlands under WOTUS (and if this should factor into our decision-making here).

**Vanessa Van Note:** To confirm Pam's point, here are the reported acres per state:

- Wetland Restoration (2021 Progress):
  - Delaware: 4,000 acres
  - Maryland: 7,000 acres
  - New York: 1,100 acres
  - Pennsylvania: 900 acres
  - Virginia: 340 acres
  - West Virginia: 29 acres
- Wetland Creation/Rehabilitation (2021 Progress):
  - Delaware: 0 acres
  - Maryland: 1300 acres creation, 1300 rehabilitation.
  - New York: 64 acres creation, 500 acres rehabilitation
  - Pennsylvania: 100 acres creation, 100 acres restoration,
  - Virginia: 240 acres creation, 26 acres rehabilitation
  - West Virginia: 0 acres

**Jeremy Hanson:** Pam is right about the Expert Panel. The credit durations were arbitrarily chosen, so I don't think it needs to be defended. It was an unofficial maximum credit at that time. Once the wetlands are on the ground, there may be questions about performance, but not a question of whether or not it's there.

**Vanessa Van Note (in chat):** As a reminder, Jeremy just elaborated on the panel process utilized during the development of the source sector workgroup guidances and corresponding credit durations.

**Mark Dubin:** I used to be involved with wetland creation in ag spaces. Agree with Pam that the majority of them continued onward as intended. There were a few that did not.

**Leon Tillman:** Are jurisdictions reporting federally funded practices as a majority or are those more from the private sector? There are monitoring requirements for NRCS wetland practices that go beyond the life of the contract. Overall I think we should think about whether we are considering the majority of practices or the exceptions.

**Vanessa Van Note:** NRCS representatives have confirmed that yes, we have lost wetlands, but the majority last beyond 30 years. I can look into whether or not a majority of the practices reported by the state are federally funded.

**Pam Mason:** Yes, Vanessa. NRCS and DU and usually in partnership. If practices did not continue on as intended, like Mark said, there is a process to account for and enforce whether or not the wetland changes.

**Leon Tillman:** Confirming Pam's point above. Once wetlands are in place, there are certain laws that require protection as it relates to the conversion of the wetland for ag purposes.

**Rebecca Hanmer:** I was on the original BMP verification panel. One of our principals was that the level and extent of verification should be related to how much reliance jurisdictions are placing on those practices to meet their WQ goals. Wetlands are not one of the practices that would likely be in the top ten practices that are being relied upon, based on Vanessa's note prior. So I would argue for less verification or some kind of statistical survey or method instead of case-by-case verification. In addition, federal regulations for nontidal wetlands are not perpetual. SCOTUS is looking at that right now. Concerned about passing this if the law changes.

**Pam Mason (in chat):** PA, MD, and VA all have nontidal laws. DE is the only one that doesn't.

**Cassie Davis (in chat):** New York does too.

**Vanessa Van Note:** What department enforces that?

**Pam Mason:** VA DEQ for Virginia and MDE for Maryland.

**Lisa Beatty:** In PA, it's under the Bureau of Clean Water.

**Cassie Davis:** For NY, we have a Freshwater Wetlands Act under the Division of Fish and Wildlife and Marine Resources Bureau.

**Vanessa Van Note:** With a federal conservation contract, does the state department need to get involved to implement that wetland?

**Leon Tillman:** There's usually a permitting process to ensure we're following the state laws as it relates to implementing the wetland. But they are not required to do anything beyond that such as verification or inspection, NRCS takes care of that. Also, we are required to do monitoring on wetland easements, so if there's a deficiency, we're required to fix it to make sure it's in compliance.

**Pam Mason:** So we have state protection as well as federal protection.

**Mark Dubin:** Maybe we should document various permitting and oversight laws for the states and federal agencies. They could be inherent elements of the verification process.

**Vanessa Van Note:** In the wetland sector guidance, they considered reverification as almost longer-term monitoring. The original guidance suggested doing that via remote imagery, like we

do for forest practices, but according to the land use team, we just don't have the resources at the moment. Also, the states that are most impacted by this are Pennsylvania and Delaware. The other states that report wetland restoration don't seem to be losing many practices due to the inability to verify.

**Ted Tesler (in chat):** Aside from mitigating the verification losses, we would also like to report our mitigation bank data so that can help in meeting our ambitious WIP goals.

**Action:** Vanessa Van Note, Coordinator, and Jackie Pickford, Staffer, will compile additional feedback from the BMPVAHAT on the Wetland Credit Duration Recommendation. Jackie will distribute a poll for voting members to indicate their position on the consensus continuum regarding the recommendation.

10:00 **Documentation of Proceedings**, *Vanessa Van Note, EPA/Coordinator (55 min)*.

Vanessa reviewed the documentation of proceedings for the BMPVAHAT, including an outline of the findings of the group, official decisions made to meet the original charge, and any outstanding issues and/or suggestions to the WQGIT on a path forward regarding verification. Following the overview of the report, there was an open discussion on the suggestions to the WQGIT. Moving forward, there will be a review period of one month for the BMPVAHAT to provide comments on the report before it is presented to the Water Quality Goal Implementation Team (WQGIT).

**Discussion**

Topic 1: Managing Future Verification

**Rebecca Hanmer (in chat):** Suggestions in (1) make sense to me.

Topic 2: 1619 Data Sharing

**Suzanne Trevena:** For number 1 - can you clarify if the federally funded ag practices remain in perpetuity until addressed?

**Vanessa Van Note:** If the practice is NRCS funded, it would not have a credit duration assigned to it until the component of full access to federal data is fully realized. This would occur while we're pursuing other avenues to find a solution to that problem.

**Ruth Cassilly:** Is there an option to still have a credit duration but not have it verified? If it's an annual practice, it comes out of the model, but it's not verified.

**Vanessa Van Note:** I think what we're referring to here are multi-year practices. But it depends how NEIEN is structured. I have to double check with Jess.

**Adrienne Kotula:** Would this apply retroactively?

**Vanessa Van Note:** Yes, it would be applied retroactively.

**Leon Tillman:** Suggestion to clarify that the results from those NRCS pilots have not yet been finalized.

**Vanessa Van Note:** Yes, I'll add that. In VA, data from that project will be reported for 2022 progress. For the PA project, EPA, USDA, and PADEP have been briefed. A USGS report will be released as a Chesapeake Bay Program report series in about 90 days (draft form). In the meantime, USGS plans to bring the presentation of findings to the AgWG as a precursor to the report.

**Rebecca Hanmer:** The retroactivity would have consequences for forest buffer accounting.

**Olivia Devereux:** In terms of being applied retroactively, it doesn't change the credit duration period for what is seen in the land cover data. But I can talk to you about it in detail further.

**Vanessa Van Note:** Still need to discuss the feasibility of this suggestion.

**Ted Tesler (in chat):** Don't expect the USGS/NRCS report will change our ability to verify individual practices in PA.

**Adrienne Kotula:** So the NRCS task force is not addressing the 1619 agreements?

**Leon Tillman:** We are not. We're pulling the data from the pilots and looking at crediting for practices and BMPs from the federal side. So it's more on the crediting side rather than the verification side.

**Adrienne Kotula:** So not looking at expired practices?

**Leon Tillman:** If it's related to practice crediting, we'll look at it. But it won't solely be from the verification side.

**Lisa Beatty:** So you'll be looking at extending credit durations and not more solutions for actual reverification?

**Leon Tillman:** Looking at other opportunities for crediting, such as practices that are not currently getting credit in the model and other avenues for NEIEN appendix crosswalks.

**Lisa Beatty:** Will any of that be looking at credit duration in the model?

**Leon Tillman:** That hasn't been established yet because the group hasn't been charged.

**Lisa Beatty:** Would be helpful to add avenues to extend or change credit durations in the charge. We gave data from Practice Keeper about the validity of increasing credit durations for a variety of ag practices because they were still functioning as intended for field investigations. NY and MD also gave data about NRCS practices functioning beyond their credit durations.

**Vanessa Van Note (in chat):** I will note for clarity, Lisa, that the 10 year credit duration is a regulatory lifespan not a design lifespan.

### Topic 3: Capacity for Verification

No comments.

### Topic 4: Addressing BMP Performance

**Jeremy Hanson:** For the second bullet, I would suggest clarifying or switching "longevity" with "performance".

**Vanessa Van Note:** I actually am referring to performance here. Our focus as a program has been on longevity, so I think we need to clarify and better define that as a program.

### Topic 5: Improve documentation

**Katie Brownson:** To my knowledge, the RI-Forest Buffer practice hasn't been brought to the FWG. I don't think Sally or Rebecca were familiar with this either.

**Vanessa Van Note:** I can forward you the emails I had with Sally and Rebecca about this. I'll also add some supporting language here and link to the supporting documentation that I sent Rebecca and Sally.

### General Comments

**Vanessa Van Note:** The membership will have a month to provide comments on these recommendations and I will add in another section summarizing membership feedback specifically.

**Action:** Vanessa Van Note will finalize BMPVAHAT final report. Jackie Pickford will distribute a poll to collect feedback from the BMPVAHAT on the summary and

recommendations portion of the report, which will eventually be added to the final report. Members will have one month to provide comments before it is presented to the Water Quality Goal Implementation Team.

10:55 **Recap and Next Steps**

11:00 **Adjourn**

**Participants**

Vanessa Van Note, EPA-CBPO

Jackie Pickford, CRC/Staffer

Lisa Beatty, PA DEP

Ted Tessler, PA DEP

Cassie Davis, NYSDEC

Jennifer Walls, DE

Clare Gooch, DNREC

Jason Keppler, MD

Alicia Ritzenthaler, DOEE

Matt Gallagher, DOEE

Suzanne Trevena, EPA

Mark Dubin, CBPO/UME

Loretta Collins, UMD-AgWG Coordinator

Olivia Devereux, Devereux Consulting

Katie Brownson, USFS

Karl Blankenship, Bay Journal

Pam Mason VIMS, WWG

Rebecca Hanmer, Chair FWG

Jessica Rodriguez, DoD CBP

Matt Gallagher, DC DOEE

Jeremy Daubert, AGWG chair, VA extension

Alicia Ritzenthaler, DC DOEE

Curt Dell, USDA-ARS

Alicia Ritzenthaler, DC DOEE

Jennifer Walls - DE DNREC

Scott Heidel, PA DEP

Ruth Cassilly, UMD CBPO

KC Filippino, LUWG Chair, HRPDC

Clint Gill, Delaware Dept of Ag

Leon Tillman, USDA/ NRCS